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Refereed Paper

## ***The Hobbit* law: Precarity and market citizenship in cultural production**

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### **Abstract**

This paper analyses the 2010-11 employment dispute surrounding the filming of *The Hobbit* in Aotearoa New Zealand, in which issues of precarity and market citizenship were illuminated in the context of transnational film production and labour relations. The case is examined in relation to theories of cultural work, legal studies and feminist political economy and in particular, draws on Fudge's (2005) concepts of industrial and market citizenship and "citizenship at work". This dispute refracts and distills some of the links between precarity and market citizenship that cut across regional, national and supra-national boundaries. I use the case to argue for a renewed attention to forms of transnational labour organisation in studies of precarious cultural work.

### **Keywords**

Precarious work; cultural labour; unions; market citizenship; *The Hobbit*.

### **Biography**

Bridget Conor is a senior lecturer in the Department of Culture, Media and Creative Industries at King's College London and has previously taught at Goldsmiths College and AUT University in Auckland. She is the author of *Screenwriting: Creative Labour and Professional Practice* (Routledge 2014) and the co-editor, with Rosalind Gill and Stephanie Taylor, of *Gender and Creative Labour* (Sociological Review Monograph 2015).

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## Introduction

Drawing on theories of cultural labour, feminist political economy and legal studies, this paper considers how we can link up and deepen our understandings of precarity as it is experienced within forms of cultural production. The paper analyses the 2010-11 employment dispute surrounding the filming of *The Hobbit* in Aotearoa New Zealand, in which particular vectors of precarity were starkly illuminated in the context of transnational film production. Drawing on Fudge's (2005) concepts of industrial and market citizenship and "citizenship at work", I connect this particular dispute to a more general discussion of union work and organisation in cultural production. Overall, I am presenting this as a type of extreme or "limit case" and am interested in a number of questions: What are the consequences for local cultural workers when they speak out about issues as basic as fair pay and employment contracts? How do national and supra-national organisations respond to this kind of dispute in an environment that, by dint of its size and location, is already precarious? And then, more broadly, what can this limit case tell us about the complex interactions between precarity and citizenship in the working lives of creatives? This discussion is particularly attendant to dynamics of precarity that cut across regional, national and supra-national boundaries. It illustrates the ways in which a specific employment dispute in a small and precarious but prominent cultural industry, can help us to more broadly see how the links between precarity and particular kinds of citizenship are maintained and reinforced.

Outlining the Hobbit case and the subsequent "Hobbit law" legislation as a discrete and particular moment of crisis and consequence in Section I, I seek to understand how such moments illuminate the complex machinations of cultural labour organisation. Some scholars have examined labour disputes in relation to particular kinds of cultural production or work (notably Mosco and McKercher, 2008, who use the term "knowledge workers" in their analysis) and here, I use the case to focus on some of the recent organisational dynamics of the screen production industry in Aotearoa New Zealand, a geographically peripheral location which has nonetheless become a prominent node in Hollywood's dispersed production model. These moments are often extreme or idiosyncratic – strikes, boycotts or industrial actions in which, briefly, cultural workers and their daily conditions of work are made visible. They represent a very specific set of conditions in terms of geography, industry, policy, labour conditions, infrastructure and the tools or tactics deployed by the labour organisers themselves. They also make visible investments by producers, national governments and "supra-national organisms" of capital (Hardt and Negri, 2000) in forms of market citizenship that seek to undermine and erode collective labour organisation, and I discuss this further in section II. In the final section of the paper, I draw on the wider field of cultural labour studies as well as screen union and guild membership figures to argue for a renewed attention to forms of transnational labour organisation in studies of precarious cultural work.

## *The Hobbit law*

In October 2010, the story broke about a dispute between NZ Actors' Equity (NZAE), the Australian actors' guild (the Media Entertainment and Arts Alliance, MEAA) and the producers of *The Hobbit* films, concerning the use of non-unionised actors in the production. At this time, two films were planned based on the J. R.R. Tolkien book *The*

*Hobbit* and this subsequently became three films. The dispute began when the International Federation of Actors (FIA) issued a “do not work” order to the NZAE and the MEAA, as well as to actors’ unions in the US, Canada and beyond, because the production was offering non-union contracts with no minimum payments and conditions of work. NZ Actors’ Equity (NZAE) is an autonomous affiliate of the MEAA and they issued a statement that said, “Until we reach a fair and equitable solution, we recommend that all performers wait before accepting any engagement on *The Hobbit*” (Child, 2010a).

At first glance, the positions of those involved signalled the asymmetrical production relations of transnational filmmaking. Transnational production dynamics dictate that when Hollywood productions move outside Los Angeles, which may often be for various “creative” reasons, they also search for economic incentives to off-set perceived or actual risks: infrastructure, tax rebates or credits, a favourable exchange rate, and skilled but cheap and non-unionised labour wherever possible. Locations such as Australia and New Zealand have long-standing legislative frameworks in place to ensure that film workers are not covered under collective bargaining agreements and are not entitled to residuals (more on this below).<sup>1</sup> This is in stark contrast to the highly robust labour market in the USA for example, in which unions and guilds represent both “above”- and “below-the-line” workers, ensuring that their members work under union agreements wherever they perform that work (sometimes using explicit “global” provisions such as Global Rule One for the US actors’ union SAG-AFTRA, see SAG-AFTRA, 2015). This means that at particular locations, some workers will be covered under collective union agreements that ensure minimum rates of pay, residuals and benefits, whilst others will not. When the actors in New Zealand started talking about these asymmetries in the context of their labour conditions, the threat of an alternative location was immediately raised. Soon after the “do not work” order was announced - it was re-labelled a “boycott” by the films’ producers and by New Zealand media outlets - the director Peter Jackson threatened that the production would “go east” (that is, to Eastern Europe) if the dispute was not quickly resolved. Locations for “runaway production” (or “internationally-mobile films” as it is more benignly referred to in New Zealand film policy, see Conor, 2004) continue to aggressively compete for this kind of big-budget and high profile filmmaking. This kind of competition and the pressure to increase mechanisms such as tax rebates ad infinitum, is key to the continued efficiency of the International Division of Cultural Labour (or NICL; see Miller et al., 2005) and, when the conditions are amenable, non-unionised workers become an enticing carrot.

At the time that this story surfaced, Jackson disputed the NZAE and MEAA’s claims forcefully. He issued a long, angry statement attacking the unions for meddling in an industry with which they have little direct influence, citing regional politics as a motivating factor and claiming that NZAE represented only around 200 of the estimated 2,000 actors working in the New Zealand industry. He wrote:

It feels as if we have a large Aussie cousin kicking sand in our eyes ... or to put it another way, opportunists exploiting our film for their own political gain. They want greater membership since they get to increase their bank balance (Three News, 2010).

Jackson disputed the “anti-union” accusation, arguing that he “always attempted to treat my actors and crew with fairness and respect” (Three News 2010). Peter Jackson is at the centre of the small New Zealand film industry, having successfully built up a production complex (including post-production facilities) outside Hollywood, in Wellington, or “Wellywood” as it is now commonly known. He also presided over a 2010 report into the New Zealand Film Commission, the funding body for New Zealand film production, in which an “overhaul” of its funding strategies was recommended (Dickison, 2010). Regional politics were indeed at play, but in ways that were difficult to read clearly. It was also unclear how many New Zealand actors were materially affected by the non-union conditions. However, Equity spokespeople supported the

general requests for dialogue with Jackson and his producers. Jennifer Ward-Lealand, president of the NZAE, stated: "Our members are simply seeking fair and equitable engagement terms for NZ actors, more in line with those that protect actors from Australia, the US or the UK who will be working on the production" (NZAE, 2010).

From some distance, the resolution to this dispute was one of its most disturbing features. This came after the widespread vilification of the NZAE and its members, street protests in New Zealand and heated discussions featuring the slogan, "New Zealand is Middle Earth" (Child, 2010b). By this stage, the NZAE and MEAA had ended their call for what was still labelled a "boycott" (later described as "naïve" and "taken from a weak position against an omnipotent opponent", see McAndrew and Risak, 2012<sup>ii</sup>) but according to the producers, including writer/producers Fran Walsh and Philippa Boyens, New Zealand was now considered a "risky" and more precarious location.<sup>iii</sup> In a display of coercive power reminiscent of Hardt and Negri's concept of "Empire", representatives from Warner Brothers (owned by Time Warner, a "supranational organism" of global capitalism as Hardt and Negri, 2000, term it) flew to New Zealand to negotiate a settlement directly with the New Zealand government. In return for retaining the production, hosting duties for one of the world premieres and the inclusion of tourism promotional materials on DVDs and other digital merchandise, New Zealand Prime Minister John Key agreed to a settlement package including an estimated \$NZ34 million in extra tax breaks and subsidisation of the marketing costs for the films in addition to the \$NZ65 million already pledged by the government (McAndrew and Risak, 2012, 71). More than simply the exchange of capital however, the agreement also required "emergency" changes to New Zealand employment legislation, changes that were passed overnight and without public consultation, "effectively "immunizing" the New Zealand film industry against union activity and legislated employment regulation" (Ibid, 57). McAndrew and Risak note in their analysis that this specific legislative change can now conveniently be extended to other workers or workplaces in New Zealand and is a "textbook example of an effective strategy to keep a workplace, an industry or even a national labour market union-free and unregulated" (Ibid, 74). *The New Zealand Herald* (2010) called the deal "extortionate" and *The Hollywood Reporter's* Jonathan Handel argued that the deal was a "pretty extraordinary" display of multinational power (Sherer, 2010). And as McCrystal (2014) points out, a 2005 legal dispute involving a model-maker working for Jackson's production company Three Foot Six Ltd. was a crucial background factor. That dispute was resolved with the court ruling that the worker was an employee rather than an independent contractor. As McCrystal writes,

Although reflecting only the particular facts surrounding the engagement of Mr Bryson, the decision was viewed as a dangerous precedent by the film production companies. Parliament sought to allay these fears by excluding all film production work contracts from the coverage of the ER Act<sup>iv</sup> (even if they might amount to an employment contract at common law) unless the contract "provides" that the worker is otherwise an employee (2014, 105).

The larger deal brokered by the New Zealand government has unsurprisingly led to the announcement of larger and sweeter production deals. In a "memorandum of understanding" between MPs and James Cameron and his producers signed in December 2013, the New Zealand government pledged a minimum of \$NZ500 million investment in the three new *Avatar* films that will be made in New Zealand with the bonus 25% production rebate, although Cameron "would have liked to see even higher rebates" (Trevett, 2013). Cameron, who is also now a New Zealand land owner (Gibson, 2013) also offered, along with his producer Jon Landau, to set up a "screen advisory board" in New Zealand and in June 2014, the full membership of the new Screen Advisory Board was announced – Peter Jackson will sit alongside Cameron and Landau, Fran Walsh, Jane Campion and Andrew Adamson as they "help the New Zealand screen sector create the skills and connections to be able to generate their own intellectual property, compete internationally and attract overseas finance" (Joyce and Finlayson, 2014).

### **Union work and forms of citizenship in Aotearoa New Zealand**

The enactment of the “Hobbit law” can be thus characterised as a limit case<sup>v</sup> for anti-union legislation in a cultural industry that has made significant and sustained investments in its creative industries, particularly the film industry. Successive centre-left and centre-right governments, as well as now-privatised service providers in New Zealand, have offered various sources of funding, services and support to international producers: tax loopholes and credit schemes, infrastructure (high-speed broadband for example or a “fatpipe” as Thompson, 2008, terms it, so tasks such as videoconferencing or visual effects work can be coordinated in real time between production locations) and marketing and tourism campaigns which have used authoritative slogans such as “Studio NZ” and “New Zealand is Middle Earth”. In this context, a legislative environment that ensures New Zealand is “risk-free” and always “open for business” is arguably a crucial additional investment in securing the post-Hobbit future of the industry.

In a limit case such as this, it also becomes clear that these investments have particular effects on the forms of citizenship that can be exercised by workers in this environment. The state and those “supra-national organisms” of capital (Hardt and Negri, 2000) were able to exercise unprecedented power in enacting the “Hobbit law”, stripping local workers of their labour rights, their ability to determine their own employment status, their ability to simply *be* employed. In short, their industrial citizenship and/or their opportunities for a new kind of “citizenship at work” were severely, perhaps irrevocably curtailed and replaced (overnight) by a pernicious form of market citizenship (Fudge, 2005).

Unsurprisingly, this is not particularly new or novel in the economic and political context of Aotearoa New Zealand and I say more about this in this section. In the third and final section I then draw on theories of cultural work and recent labour union data to highlight that glimpses of “citizenship at work” continue to animate the transnational screen production industries. Although the New Zealand government, Peter Jackson et al., and Warner Brothers did much to curtail basic labour rights and pitted workers and their organisations against each other, there are signs of hope in Aotearoa and beyond.

Judy Fudge<sup>vi</sup> defines industrial citizenship as “a status limiting commodification and conferring rights to influence terms of employment” (2005, 5) and also notes, using Forrest (1995) that although it may formally be viewed as universal and gender neutral, industrial citizenship is limited in that it is built on the male breadwinner as the pillar of the standard employment relationship (Fudge 2005, 9). Fudge’s analysis is echoed by Leah Vosko (2009), whose analysis of precarious employment links up the concept of this standard employment relation with the gender contract and the definitions and boundaries of citizenship. Fudge discusses the erosion of this traditional form of citizenship (she is discussing this in the Canadian context) in the face of numerous political and social forces in evidence in extremis in New Zealand, including the advance of neo-liberalism and privatisation, globalisation, free trade and the increasing precarisation and feminisation of labour markets. Fudge argues that there are two primary options for a revised conception of industrial citizenship in the wake of the changes she describes: market citizenship or citizenship at work. Market citizenship, as evidenced in the name, is that which shifts the risks and responsibilities of employment, remuneration and care to individuals (2005, 15). “Citizenship at work” on the other hand, “extends the entitlements of citizenship beyond employment and recognises a wider range of work – socially necessary labour, including caring for family members – as a contribution to the community” (16). Fudge defines a model of market citizenship as leading to a very different set of outcomes: “Social rights that counteract the commodification of labour are severely curtailed and the obligation to be employed has deepened and expanded” (15).<sup>vii</sup>

What is both fascinating and deeply vexing about this limit case is the broader economic and political landscape in which it was conceived. This landscape reflects Fudge’s definition of market citizenship on numerous levels. It is no coincidence that

New Zealand has often served as a petri dish for extreme forms of deregulation coupled with the rolling back of employment legislation that paved the way for the “Hobbit law”. Jane Kelsey calls New Zealand an “economic test-tube” and writes: “Economic theories which had never been tried, let alone proved, anywhere else in the world became New Zealand government policy - first at the hands of a Labour government from 1984 to 1990, and then continued with equal, if not greater, fervour by its National government successor” (1999, np). The David Lange-led government of the mid-1980s instituted sweeping deregulation that included widespread privatisation and the selling of state assets including Telecom, the national telecommunications provider, and the transformation of Television New Zealand into a hybrid state-owned enterprise. This period is often referred to as the “New Zealand experiment” or “Rogernomics” because of the influence of Finance Minister Roger Douglas, who went on to work in extreme-Right political movements (see for example Easton, 1989, and Jesson, 1999).

The reforms continued into the 1990s under a National government and included the Employment Contracts Act (1991) that dismantled New Zealand’s post-war industrial relations framework. Collective bargaining mechanisms and compulsory union membership were abolished, replaced by a model based on the individual employment contract. By removing collective bargaining mechanisms, the Act also ensured that for cultural workers such as those in the film industry, residuals would not be paid for work performed (see Haworth, 2011). The aggressive pursuit and enactment of free trade deals has been another element of a business-friendly marketization agenda in Aotearoa since the mid-1980s. Most recently, negotiations for the Trans-Pacific Partnership Agreement (TPPA) have been explicitly linked to the state’s ties to Hollywood studios. As Jane Kelsey (2012: np) puts it, “The entertainment industry is the principal driver of US demands for radical new intellectual property protections in the Trans-Pacific Partnership Agreement, currently under negotiation.” Kelsey goes on to call the “Hobbit law” “a forerunner of things to come” (2012, np) in terms of the stripping -out of labour rights and protections.<sup>viii</sup>

In this context then, perhaps the “Hobbit law” is not only a limit case but also an utterly logical step in the deliberate disassembly of a model of industrial citizenship, and the subsequent implementation of a model of market citizenship, in Aotearoa New Zealand. Tools and mechanisms that are crucial to workers being fairly rewarded, recognised and remunerated for their work, including residuals and intellectual property protections, are removed or are under threat. In the case of the “Hobbit law”, film workers became momentarily visible as targets of this on-going disassembly. It is important to emphasise, however, that forms of collective organisation and unions themselves are not fully dismantled, even in this extreme case. They remain, and glimpses of Fudge’s conception of “citizenship at work” are visible. In the final section of this paper, I wish to highlight some of these. I do so by firstly turning to the burgeoning field of cultural labour studies in which the dynamics of precarious cultural work are studied but in which the analysis of labour organisations is somewhat limited. Using the “Hobbit law” case, I point to forms of latent or potential “citizenship at work” and thus, some signs of hope.

### **Creative work and labour organisation**

Unions for cultural workers, the forms of citizenship they engender and the battles they fight in particular time(s) and place(s) are central to our understanding of the dynamics of precarity that have been theorised in the field of cultural labour studies. As the field has grown, the novel and increasingly precarious features of media production work have rightly been highlighted. As Gill and Pratt (2008, 14) state, “a number of relatively stable features of this kind of work” have been identified and they offer a summary:

A preponderance of temporary, intermittent and precarious jobs; long hours and bulimic patterns of working; the collapse of erasure of boundaries between work and play, poor pay, high levels of mobility; passionate attachment to the work and to the identity of the creative laborer; an attitudinal mindset that is a blend of bohemianism and entrepreneurialism; informal work

environments and distinctive forms of sociality; and profound experiences of insecurity and anxiety about finding work, earning enough money and “keeping up” in rapidly changing fields.

Empirical investigations of creative labour have then examined both locally-embedded forms of cultural production (from fashion designers in the UK (McRobbie, 1998), to new media workers in Europe (Gill, 2002) to film and television workers in Los Angeles (Caldwell, 2008)), and transnational dynamics of production and labour relations (such as Mayer, 2011, and Vanderhoef and Curtin, 2015). What has not been given significant attention in creative labour literature however, is the simultaneously local and global dynamics of worker organization in the contemporary moment. As the “Hobbit law” and the more general case of the New Zealand screen industry illustrates, particular mechanisms of policymaking and legislation are integral to the development and smooth functioning of local labour markets – from tax credits (in addition to the New Zealand case, see Coles, 2010, who analyses the effects of regional tax credits in Canada) to the provision of collective bargaining tools for freelance cultural workers (see Choko in this issue) – and in particular contexts, they may enable forms of citizenship to either flourish or wither on the vine. In general however, the changing nature of labour organisation for cultural work still lacks sustained attention. This is partly because, as Banks and Hesmondhalgh (2009) have argued in the UK context, labour itself is often absent in cultural policymaking, and the overall policy agenda they argue, has become “increasingly linked to educational and employment policy, but under the sign of economics rather than social reform or cultural equity” (428). If labour is visible, it is certainly not linked to the conditions or experiences of cultural workers’ lives. Nor are collective organisations such as unions and guilds routinely visible in policymaking, ironic considering they are still at the frontlines when it comes limiting the adverse effects of poor and unsustainable working conditions (as NZAE and the MEAA were doing when they followed the advice of FIA and circulated the “do-not-work” order in 2010).

To discuss the labour organisation and in particular, the unionisation of creative workers such as actors, cinematographers, lighting technicians or production designers, could in fact be viewed as somewhat peculiar in the context of creative labour theory. This body of work is largely premised on the assumption that new creative work is post-Fordist, flexible, mobile and often without histories of industrial organisation, especially when it comes to wholly new forms of virtual or digital labour. To an extent, with cultural work frequently classed as “atypical” or “non-standard” (by the International Labour Organisation for example, ILO, 2014) this makes logical sense; it may be increasingly difficult for traditional unions to capture, retain and represent the interests and needs of cultural workers. But, as *The Hobbit* case also illustrates, the Anglophone screen production industries are populated by a number of strong unions and guilds who represent their largely freelance membership and in many cases, have done so for decades. The ILO highlights US “talent” guilds such as the Directors Guild of America (DGA) and the Writers Guild of America (WGA) as well as British unions such as Broadcasting Entertainment Cinematograph and Theatre Union (BECTU) and the Producers Alliance of Cinema and Television (PACT) as successful examples of organisations representing and bargaining collectively on behalf of cultural workers. “Craft” unions such as the International Alliance of Theatrical and Stage Employees (IATSE) also have long histories and have developed robust collective identities for their members.<sup>ix</sup> And of course, unions and guilds for cultural workers have had to evolve and pivot in order to deal with the changing nature and precarious dynamics of their members’ working lives. In fact, in one of most recent and high-profile cases of cultural workers on strike, the US Writers’ Strike of 2007-08, it was these dynamics which were the flashpoint of the battle: the payment of residuals for the digital and online circulation of members’ work (see Banks, 2010).

In addition, the US unions and guilds have been particularly strident in their collective actions to halt the flight of production and labour outside Los Angeles – to other US states,<sup>x</sup> to Canada, and to many other locations from Eastern Europe to New Zealand.<sup>xi</sup>



Yet as the case of New Zealand so clearly illustrates, tax credit systems, investment in infrastructure and non-union employment regimes have been successfully deployed by “local” or peripheral governments in order to support filmmakers outside Hollywood. This has also presented challenges for labour organisations at both core(s) and peripheries. On the one hand, unions and their members are understood as fundamentally in competition for the limited amounts of production and labour spending that move from location to location. But on the other hand, there is evidence of genuine labour solidarity as *The Hobbit* case also illustrates. The International Federation of Actors (FIA) were integral in this process; once Warner Brothers had notified the MEAA that they would not bargain, FIA asked its members, including SAG and AFTRA in the USA, Canadian Actors Equity and Equity UK to avoid engaging with the producers and production (see Kelly 2011).

This is crucial because these other industries and locations offer their own ecologies of labour organisation which are, whilst peripheral, surprisingly active and robust, even considering the assault on industrial citizenship and “citizenship at work” which the “Hobbit law” represents. Considering actors’ and performers’ unions for example, Equity UK reports year-on-year increases in membership since 2007, and total membership in 2014 of 43,500 (Equity UK, 2014). New Zealand Actors Equity has also seen an *increase* in membership since the Hobbit case, from 438 members in 2012 to 613 in 2013 to 725 in 2014 (New Zealand Companies House, 2012, 2013, 2014). The larger MEAA saw a fall in membership between 2013 and 2014 (from 6379 to 5913) but NZAE is cited as one of their “success stories” (MEAA, 2014).<sup>xii</sup> Since the resolution to the Hobbit dispute, NZAE has also negotiated and secured new “individual performance agreements” with the Screen Producers and Directors Association (SPADA) in Aotearoa. As it says on the tin, this is an individual agreement only, to be negotiated between individual workers and producers and as NZAE describes it: “SPADA will be responsible for issuing the Agreements to producers on a production-by-production basis, and Equity New Zealand members will be able to access the Agreements for review” (NZ Actors Equity, 2014). However, with a combination of a new agreement (which replaces an older and voluntary set of best practice guidelines known as “The Pink Book”) and a significant increase in membership, it seems clear that the possibilities of “citizenship at work” are not entirely lost. McCrystal (2014) provides an excellent discussion of the possibilities for collective bargaining by film workers in New Zealand post-the “Hobbit law”. Using both the Employment Relations Act (2000, which supersedes the Employment Contracts Act 1991) and the Commerce Act (1986), she discusses these possibilities and notes that, “avenues for collective bargaining activities *still exist* for these workers” (130, my emphasis). She goes on to argue that new forms of collaborative organization and collective team working are viable in this new legislative framework that is otherwise utterly hostile to industrial citizenship or “citizenship at work”:

The reasons that the film production companies are attracted to the use of these teams are the same reasons that will supply a collaborative purpose and enable the creation of collectives that can bargain together without the necessity of having to go into business with each other via a partnership or corporation, or run the risk of breaching the Commerce Act (2014, 131).

Whether such avenues will prove fruitful, and whether the NZAE’s individual employment agreements will engender the kinds of labour conditions New Zealand film actors continue to seek, is still to be determined. At the very least, these avenues offer signs of hope in that otherwise rather grim “economic test-tube” that is “Studio NZ”. And what is instructive for studies of precarious cultural work is this attention to the *work* of labour organisations - their losses, their gains and the battles themselves.

### **Conclusion**

In a recent “issues paper” focused on employment relationships in the media and cultural industries, the International Labour Organisation (ILO) summarises the

economic, political and social changes which have facilitated the increasing precariousness of media and cultural work and inherently—the rise of market citizenship as Fudge (2005) defines it:

...the gradual or rapid liberalization and restructuring of these industries has been accompanied by: the growth of a whole range of small and large enterprises (and the disappearance of many others); new employment opportunities and ways of working; technological changes that affect the sector's composition and employment relationships; the mushrooming of start-ups in social and other new media; significant changes in audience tastes; job cuts in publicly funded media and entertainment companies; and a shift towards more temporary employment arrangements with weaker worker protection (ILO, 2014, 1).

Because of all this, the ILO writes—with reference to the preamble of their Employment Relationship Recommendation (2006)—“there are difficulties of establishing whether or not an employment relationship exists” (ILO, 2014, 1). Whilst they highlight some national contexts in which a “substantive definition of the employment contract” (2) is utilised for freelance and precarious cultural workers, they also highlight a contrary trend. Any guesses as to which legislative change they use to illustrate this? Bingo: “... An October 2010 amendment to the New Zealand Employment Relations Act 2000, to exclude from the statutory definition of “employee” all those engaged in film production work, thereby removing employment-based rights and protections” (2). Thus, a note of caution is needed. Whilst we need to acknowledge the possibilities for the growth of new kinds of collective working practices and a “citizenship at work” model in precarious cultural work, we must also be attentive to the very real risks cultural workers and organisations currently face.

In this paper, I have used the “Hobbit law” as a limit case in order to open up a broader dialogue about how we investigate contemporary experiences of the labour organisation of cultural workers in the context of widespread precarity and investments in that precarity. My general argument here is that in the field of cultural labour studies, more sustained attention needs to be paid to the dynamics of labour organisation: the ways in which workers have organised in the past; how organisations are evolving in order to serve their members’ current and future interests; emergent forms of international solidarity in the face of the relentless competition for jobs at rock-bottom prices; and the ways in which workers’ interests and rights are genuinely and urgently under threat. The flashpoint that *The Hobbit* case represents is useful in all its sensational detail: Back-room deals! Street protests! The studio bosses flew to New Zealand! Employment law legislated overnight!

It is the novelty and extremity of *The Hobbit* case that illuminates the very high stakes in the on-going battles over labour conditions, fairness, dignity and the possibilities for “citizenship at work” in the media production industries. The producers of *The Hobbit* films, the Hollywood studios and the New Zealand government were able to massage and exploit a moment of industrial uncertainty in order to expand and legislate a model of market citizenship that will have far-reaching effects on cultural and other workers in Aotearoa and beyond. But as the aftermath of the “Hobbit law” makes clear, potential forms of “citizenship at work” are also perceptible. If our theoretical and empirical work can build more productive linkages across cases and places, *with* labour organisers and on a transnational scale, we can fight to make them increasingly visible and viable for us all.

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## Endnotes

- i. Haworth (2011) defines residuals as “The returns to performers, writers etc. that result from repeat performances of a work in which they have an interest” (2011: 109).
- ii. This provides one of the fullest accounts of the dispute to-date, including the “backroom” negotiations between New Zealand government officials and Warner Brothers executives. The other detailed source to emerge is a special issue of the *New Zealand Journal of Employment Relations* edited by Tipples and Walker (2011)
- iii. Kelly (2011) presents a thorough timeline of the unfolding of these events that indicated (after Official Information Act requests) that the producers and government officials used this claim of “risk” even after the action had been called off and there has been widespread speculation about the underlying motivations of the New Zealand Government, Warner Brothers and Peter Jackson himself. By all accounts much information was kept from the public and the public record at the time. See also Tipples and Walker (2011).
- iv. Employment Relations Act (2000).
- v. My thanks to Scott Brook for suggesting this.
- vi. My thanks to Amanda Coles and Maude Choko for introducing me to the work of Fudge and Vosko.
- vii. Fudge also notes that as with the traditional concept of industrial citizenship, market citizenship is highly gendered, not least because the rise of precarious forms of work have been demonstrated to be performed disproportionately by women, but also because, under a market citizenship model, the burdens of social reproduction fall largely to women (but are not borne equally by women because of social, ethnic and class stratification amongst women, which are also exacerbated within a market citizenship model).
- viii. The TPPA has been protested widely in New Zealand and numerous labour organisations representing New Zealand cultural workers, including New Zealand Actors Equity, have issued statements arguing against the TPPA (see Theunissen 2014 and Rippon 2015).
- ix. IATSE have local branches based on both type of craft and geographical area.
- x. It’s important to note that audio-visual production often “runs away” to other US states such as Georgia, Louisiana and New Mexico where state governments have been very successful in offering large tax credit packages that lure producers away from California (see Robb 2014 for example).
- xi. Although “runaway production” is really nothing new, see Guback (1969).
- xii. And this is in the more general context of an international and longer-term decrease in union density. OECD statistics indicate that union density has decreased in the US (13.4-10.8 between 1999 and 2013) and from higher baseline figures in the UK (30.1-25.4), New Zealand (21.7- 19.4) Canada (28.0-27.2) and Australia (25.4-17.0) (OECD 2015).

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